

Judge Marsha J. Pechman

03-CR-00176-MISC

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

TIMOTHY T. MOODY,  
Defendant.

NO. CR03-176P

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Jeffrey B. Coopersmith and Richard E. Cohen, Assistant United States Attorneys for said District, and the defendant, TIMOTHY T. MOODY, and his attorney, Gilbert H. Levy, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c).

1. The Charge(s). Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to Count 1 of the Indictment, which charges him with Wire Fraud, in violation of Title 18, United States Code, Section 1343. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. If Defendant complies fully with this Plea Agreement, the United States will move to dismiss Counts 2 and 3 of the Indictment at the time of sentencing.

3. Elements of the Offense. The elements of the offense of Wire Fraud, in violation of Title 18, United States Code, Section 1343, as charged in Count 1 of the

1 Indictment, are as follows: (1) Defendant knowingly and willfully made up a scheme or  
2 plan to defraud or for obtaining money or property by making false promises or  
3 statements; (2) Defendant knew that such promises or statements were false; (3) the  
4 promises or statements were of a kind that would reasonably influence a person to part  
5 with money or property; (4) Defendant acted with the intent to defraud; and (5)  
6 Defendant used, or caused to be used, wire communications in interstate commerce to  
7 carry out an essential part of the scheme.

8 4. The Penalties. Defendant understands that the statutory penalties for the  
9 offense of Wire Fraud, as charged in as charged in Count 1 of the Indictment, are as  
10 follows: imprisonment for up to five (5) years, a fine of up to two hundred fifty  
11 thousand dollars (\$250,000), a period of supervision following release from prison of  
12 between two (2) and three (3) years, and a one hundred dollar (\$100) penalty  
13 assessment. Defendant agrees that the penalty assessment shall be paid at or before the  
14 time of sentencing.

15 Defendant agrees that any monetary penalty the Court imposes, including  
16 the special assessment, fine, costs or restitution, is due and payable immediately, and  
17 further agrees to submit a completed Financial Statement of Debtor form as requested  
18 by the United States Attorney's Office.

19 Defendant understands that supervised release is a period of time  
20 following imprisonment during which he will be subject to certain restrictions and  
21 requirements. Defendant further understands that if supervised release is imposed and  
22 he violates one or more of its conditions, he could be returned to prison for all or part  
23 of the term of supervised release that was originally imposed. This could result in  
24 Defendant serving a total term of imprisonment greater than the statutory maximum  
25 stated above.

26 5. Rights Waived by Pleading Guilty. Defendant understands that, by  
27 pleading guilty, he knowingly and voluntarily waives the following rights:

28 a. The right to plead not guilty, and to persist in a plea of not guilty;

1                   b.     The right to a speedy and public trial before a jury of Defendant's  
2 peers;  
3                   c.     The right to the effective assistance of counsel at trial, including, if  
4 Defendant could not afford an attorney, the right to have the Court appoint one for  
5 Defendant;  
6                   d.     The right to be presumed innocent until guilt has been established  
7 at trial, beyond a reasonable doubt;  
8                   e.     The right to confront and cross-examine witnesses against  
9 Defendant at trial;  
10                  f.     The right to compel or subpoena witnesses to appear on  
11 Defendant's behalf at trial;  
12                  g.     The right to testify or to remain silent at trial, at which trial such  
13 silence could not be used against Defendant; and  
14                  h.     The right to appeal a finding of guilt or any pretrial rulings.  
15         6.     Applicability of Sentencing Guidelines. Defendant understands and  
16 acknowledges the following:  
17                  a.     The United States Sentencing Guidelines, promulgated by the  
18 United States Sentencing Commission, are applicable to this case;  
19                  b.     The Court will determine Defendant's applicable Sentencing  
20 Guidelines range at the time of sentencing;  
21                  c.     The Court may impose any sentence authorized by law, including a  
22 sentence that, under some circumstances, departs from any applicable Sentencing  
23 Guidelines range up to the maximum term authorized by law;  
24                  d.     The Court is not bound by any recommendation regarding the  
25 sentence to be imposed, or by any calculation or estimation of the Sentencing  
26 Guidelines range offered by the parties, or by the United States Probation Department;  
27 and  
28

1 e. Defendant may not withdraw a guilty plea solely because of the  
2 sentence imposed by the Court.

3 7. Ultimate Sentence. Defendant acknowledges that no one has promised or  
4 guaranteed what sentence the Court will impose.

5 8. Loss Amount. The United States and Defendant agree that the correct  
6 loss amount for purposes of applying U.S.S.G. § 2F1.1(b)(1) (Nov. 2000) is greater  
7 than \$1,500,000 but less than \$2,500,000.

8 9. Restitution. Defendant shall make restitution to the Receiver appointed by  
9 the Court in Securities and Exchange Commission v. Health Maintenance Centers,  
10 Inc., C02-153P (W.D. Wa.), in the amount determined by the Court at sentencing,  
11 with credit for any amounts already paid or collected (including any amount recovered  
12 pursuant to paragraph 10 below). Restitution ordered by the Court shall be due and  
13 payable immediately and shall be paid in accordance with a schedule of payments as set  
14 by the United States Probation Office and ordered by the Court.

15 10. Forfeiture. Defendant agrees to forfeit to the United States immediately  
16 all of his right, title and interest in any and all property, real or personal, constituting,  
17 or derived from, any proceeds Defendant obtained, directly or indirectly, from or as  
18 the result of the charged offense (which includes all acts and omissions in furtherance  
19 of the scheme to defraud as well as the execution of the scheme to defraud), that are  
20 subject to forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(c),  
21 1956(c)(7), and 1961(1), and Title 28, United States Code, Section 2461(a)(1)(c),  
22 including the following assets:

23 a. The real property located at 7445 Treeline Drive, Naples, Florida,  
24 its buildings, improvements, appurtenances, fixtures, attachments and easements, more  
25 particularly described in Attachment A, which is incorporated herein, and all furniture,  
26 pianos, and other items acquired, conveyed, and/or purchased with such real property  
27 and all rights to pursue any claims to any such furniture, pianos, and other items; and  
28

1           b.     A beige Lexus LX470, Vehicle Identification Number  
2 JT6HT00W1Y0111688, License Tag Number T48KWU.

3           Defendant agrees that each of the above-listed assets constitutes or is  
4 traceable to the proceeds of the offenses charged in the Indictment, Wire Fraud, in  
5 violation of Title 18, United States Code, Section 1343.

6           Defendant agrees to fully assist the United States in the forfeiture of the  
7 listed assets and to take whatever steps are necessary to pass clear title to the  
8 United States, including but not limited to: surrendering title and executing any  
9 documents necessary to effectuate such forfeiture; assisting in bringing any assets  
10 located outside the United States within the jurisdiction of the United States; and taking  
11 whatever steps are necessary to ensure that assets subject to forfeiture are not sold,  
12 disbursed, wasted, hidden, or otherwise made unavailable for forfeiture. Defendant  
13 agrees not to file a claim and not to pursue any claim to any of the listed property in  
14 any civil forfeiture proceeding, administrative or judicial, which may be initiated.

15          Defendant further agrees to provide a truthful statement regarding all of  
16 his assets, and to make a full and complete disclosure of all assets in which Defendant  
17 has any interest or over which Defendant exercises control and those which are held or  
18 controlled by a nominee(s). Defendant further agrees to submit to a polygraph  
19 examination on the issue of assets if it is deemed necessary by the United States.

20          The United States reserves its right to proceed against any remaining  
21 assets not identified in this Plea Agreement, including any property in which Defendant  
22 has any interest or control, if said assets, real or personal, tangible or intangible,  
23 constitute or are traceable to proceeds of the offenses charged in the Indictment (which  
24 includes all acts and omissions in furtherance of the scheme to defraud as well as the  
25 execution of the scheme to defraud).

26          In lieu of forfeiture, the United States may elect to have Defendant  
27 convey all of his right, title, and interest in any of the property listed above, and in any  
28 other real or personal property constituting or traceable to the offenses charged in the

1 Indictment which includes all acts and omissions in furtherance of the scheme to  
2 defraud as well as the execution of the scheme to defraud), to the Receiver appointed  
3 by the Court in Securities and Exchange Commission v. Health Maintenance Centers,  
4 Inc., C02-153P (W.D. Wa.). If the United States notifies Defendant of its election to  
5 proceed in this fashion with respect to one or more assets, Defendant shall immediately  
6 execute all documents necessary, and shall cooperate fully with the Receiver and the  
7 United States, to convey all of his right, title and interest in any such asset(s) to the  
8 Receiver. Any unreasonable delay or failure to do so will constitute a breach of this  
9 Plea Agreement.

10 11. Statement of Facts. The parties agree on the following facts in support of  
11 Defendant's guilty plea and for purposes of calculating the base offense level of the  
12 Sentencing Guidelines. Defendant admits he is guilty of the charged offense.

13 a. From in or about March 2000, and continuing through in or about  
14 March, 2001, at Redmond, Seattle, Bainbridge Island and other locations within the  
15 Western District of Washington, and elsewhere, the defendant, TIMOTHY T.  
16 MOODY, did knowingly and willfully devise a scheme and artifice to defraud and for  
obtaining money and property by means of false and fraudulent pretenses,  
representations, and promises, as further described below.

17 b. In or about March 2000, TIMOTHY T. MOODY, who was then  
18 working for a company called Essential Markets, heard from an acquaintance about a  
19 company called Project X, Inc. (later called Znetix, Inc.), that was purportedly  
20 involved in developing innovative fitness and health clubs. MOODY expressed interest  
21 in this company, and the acquaintance referred MOODY to Kevin L. Lawrence, the  
founder and principal officer of Project X/Znetix and affiliated companies. Lawrence  
represented to MOODY that Project X/Znetix would very shortly engage in an Initial  
Public Offering ("IPO"), after which the company's stock would be publicly traded on  
national markets at substantial prices. Lawrence also represented to MOODY that  
Lawrence had a personal net worth of at least one hundred million dollars.

22 c. MOODY knowingly fabricated and made false representations  
23 about his background and fund-raising efforts to employees and other persons affiliated  
24 with Project X/Znetix, including but not limited to the following: (1) that he was part  
25 of a very wealthy family with hundreds of millions of dollars in a trust fund; (2) that  
26 his family had founded Moodys Investors Service; (3) that he was an attorney licensed  
to practice; (4) that he had previously been employed as General Counsel to the Ford  
Motor Company; and (5) that he knew a wealthy restaurateur named P.F. Chang  
whom he was soliciting to invest in Project X/Znetix.

27 d. MOODY subsequently entered into an employment agreement with  
28 Project X/Znetix. MOODY signed the agreement on May 4, 2000, and Lawrence  
signed the agreement on behalf of Project X on May 5, 2000. The agreement provided  
that MOODY would be employed by Project X as "Chief Strategic Officer and  
Executive Advisor to the President." The agreement provided that MOODY's duties

1 would include "increasing the Company's market value and maintaining and increasing  
2 shareholder's value within the parameters of mergers, acquisitions and financial  
3 strategies," and "forming and implementing the process to expand the Department of  
4 Strategic Finance, Mergers and Acquisitions." Under the agreement, MOODY was to  
report "directly to the Chairman of Project X, Inc., Kevin Lawrence." The agreement  
provided for an employment term of three years. Project X/Znetix did not perform any  
verification of MOODY's background or employment history prior to hiring him.

5 e. With regard to compensation, paragraph 5 of the employment  
6 agreement provided for a base salary of \$550,000 per year, along with a bonus of  
\$550,000 paid on each December 31 during the term of the agreement. The agreement  
7 also provided for a "Signing Bonus" of \$2 million, with \$1.3 million of this amount to  
be paid immediately on signing the agreement and the remaining \$700,000 to be paid  
8 within sixty days. The employment agreement further provided that MOODY would  
receive from \$500,000 up to twenty percent of the value of any successfully completed  
9 merger, acquisition or similar transaction, and that MOODY would receive stock  
options, various retirement, medical, insurance, and other benefits, and reimbursement  
of business expenses.

10 f. Paragraph 5.b(3) of MOODY's employment agreement with  
11 Project X also provided as follows:

12 DPO/Mixed Paper IPO: The Employee may receive a total  
13 public paper bonus of up to \$3,000,000. The total gross  
bonus for the first issue is \$1,500,000 payable for the close  
14 of the offering currently scheduled for August 10, 2000.  
The initial public paper offered is \$25,000,000 issued under  
15 an S1 with a current share amount of 2.5 million maximum.  
A second direct, point of market issue is preferred and is  
16 scheduled to begin at the end of the initial paper. The  
second issue is scheduled to be for \$25,000,000. The bonus  
17 payable to the Employee for the second issue is \$1,500,000  
payable for the close of the second issue before December  
18 31, 2000. If both offerings close simultaneously after the  
Private Funding Ramp, then the total bonus of \$3,000,000  
19 would be payable upon to closing of the offerings. This  
language is subject to SEC approval and intended only for  
20 compensation, and not broker/dealer relationship.

21 No "first issue" or "second issue" ever occurred.

22 g. During the course of his employment, MOODY misrepresented the  
23 status of his fund-raising efforts, including falsely telling employees of Project  
X/Znetix that he had \$500,000 of checks from investors that he would remit to the  
company.

24 h. MOODY received funds from Project X/Znetix pursuant to the  
25 employment agreement that he had entered into under false pretenses. MOODY  
received a payment of \$1 million in the following manner:

26 On or about May 10, 2000, at Redmond, within the Western  
District of Washington, and elsewhere, TIMOTHY T.  
27 MOODY, having devised the scheme and artifice to defraud  
and for obtaining money and property by means of false and  
28 fraudulent pretenses, representations, and promises set forth  
herein, did, for the purpose of executing such scheme and

1       artifice, and for attempting to do so, knowingly and willfully  
2       cause writings, signs, signals, pictures, and sounds to be  
3       transmitted by wire communication in interstate commerce,  
4       that is, on or about such date, TIMOTHY T. MOODY  
5       caused an interstate wire transfer of funds in the amount of  
6       \$1,000,000.00 to be sent from U.S. Bank in Redmond,  
7       Washington, account number 153590844947 in the name of  
8       Project X, Inc., to First Union Bank in Naples, Florida,  
9       account number 4019999401 in the name of Timothy T.  
10       Moody Trust.

11       i.       During the course of his employment with Project X/Znetix,  
12       MOODY asked Lawrence on several occasions for audited financial statements for  
13       Project X/Znetix, but they were never provided.

14       j.       The PPM contained a section entitled "Management Team," and  
15       with regard to MOODY stated as follows:

16               Tim Moody  
17               Chief Strategy Officer – Business Development Group

18               Mr. Moody has previously served as the Vice President of  
19               Strategic Planning for Essential Markets and Finance  
20               Director of the Freeland Motor Group where he was  
21               responsible for acquisition strategy and financing for  
22               Freeland's dealer purchases. His experience also includes  
23               serving as Corporate Counsel for the Ford Motor  
24               Company's Southeast region and strategic work with Arthur  
25               Andersen, having helped develop and implement marketing  
26               strategies that resulted in the largest client base increase in  
27               the history of the company.

28       In fact, MOODY was not a lawyer, had never been employed by the Ford Motor  
Company as Corporate Counsel or otherwise, and had never been employed by Arthur  
Andersen. The false biographical information that MOODY had provided reached  
investors who received a copy of the Project X/Znetix 3rd Amended Private Placement  
Memorandum dated August 15, 2000, including investor Thomas Odegaard, who  
received PPM number 2200065101. At no time did Project X/Znetix inform investors  
that the biographical information about MOODY was false.

      k.       On March 2, 2001, Stephen B. White, Corporate Secretary for  
Project X/Znetix, sent a letter to Debbie Schmidtke, Human Resources Director for  
Project X/Znetix, stating, among other things, that: (1) on June 1, 2000, Kevin  
Lawrence informed White that Moody would work with Project X/Znetix in obtaining  
funding from Investment Banks and that he had experience in sales with Investment  
Banks, (2) at a corporate dinner in June, 2000, Moody represented that he was a  
lawyer, and (3) on October 6, 2000, Kevin Lawrence informed White "that Tim Moody  
was no longer an employee" and had "instructed [White] to strike Moody's name from  
our Private Placement Memorandum and to deny all request [sic] by him for a copy of  
our Memorandum."

      l.       Project X/Znetix continued to pay MOODY the compensation due  
under the employment agreement until on or about March 22, 2001.



1       12.   Sentencing Recommendations. The government and Defendant agree that  
2 the edition of the Sentencing Guidelines effective November 1, 2000, applies to this  
3 case. The government and Defendant further agree that the offense level adjustments  
4 for more than minimal planning (U.S.S.G. § 2F1.1(b)(2)(A)) and obstruction of justice  
5 (U.S.S.G. § 3C1.1) apply to this case, and that no upward or downward departures  
6 from the Guidelines are appropriate. In consideration of Defendant's agreement  
7 regarding the applicability of these adjustments, and the stipulation regarding loss  
8 amount set forth in paragraph 8 of this Plea Agreement, the government agrees to  
9 recommend a sentence at the low end of the applicable Sentencing Guidelines range.  
10 The government further agrees to recommend that Defendant receive treatment for the  
11 abuse of alcohol and/or drugs while incarcerated, if he is otherwise eligible for any  
12 such program provided by the Bureau of Prisons, and that Defendant be designated to a  
13 Bureau of Prisons facility as close to Naples, Florida, as possible. Defendant  
14 acknowledges and understands that nothing stated in this paragraph is binding on the  
15 Court at sentencing, that the Court is free to disregard the parties' sentencing  
16 recommendations, and that Defendant may not withdraw his guilty plea if the Court  
17 declines to follow the parties' sentencing recommendations.

18       13.   Acceptance of Responsibility. The United States acknowledges that if  
19 Defendant qualifies for an acceptance of responsibility adjustment pursuant to U.S.S.G.  
20 § 3E1.1(a) and if the offense level is sixteen (16) or greater, Defendant's total offense  
21 level should be decreased by three (3) levels pursuant to U.S.S.G. §§ 3E1.1(a) and (b),  
22 because Defendant has assisted the United States by timely notifying the authorities of  
23 his intention to plead guilty, thereby permitting the United States to avoid preparing for  
24 trial and permitting the Court to allocate its resources efficiently.

25       14.   Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
26 the United States Attorney's Office for the Western District of Washington agrees not  
27 to prosecute Defendant for any additional offenses known to it as of the time of this  
28 Agreement that are based upon evidence in its possession at this time, or that arise out

1 of the conduct giving rise to this investigation. In this regard, Defendant recognizes  
2 that the United States has agreed not to prosecute all of the criminal charges that the  
3 evidence establishes were committed by Defendant solely because of the promises made  
4 by Defendant in this Agreement. Defendant acknowledges and agrees, however, that  
5 for purposes of preparing the Presentence Report, the United States Attorney's Office  
6 will provide the United States Probation Office with evidence of all relevant conduct  
7 committed by Defendant.


8 15. Voluntariness of Plea. Defendant acknowledges that he has entered into  
9 this Plea Agreement freely and voluntarily, and that no threats or promises, other than  
10 the promises contained in this Plea Agreement, were made to induce Defendant to enter  
11 this plea of guilty.


12 16. Statute of Limitations. In the event that this Agreement is not accepted by  
13 the Court for any reason, or Defendant has breached any of the terms of this Plea  
14 Agreement, the statute of limitations shall be deemed to have been tolled from the date  
15 of the Plea Agreement to: (1) thirty days following the date of non-acceptance of the  
16 Plea Agreement by the Court; or (2) thirty days following the date on which a breach  
17 of the Plea Agreement by Defendant is discovered by the United States Attorney's  
18 Office.

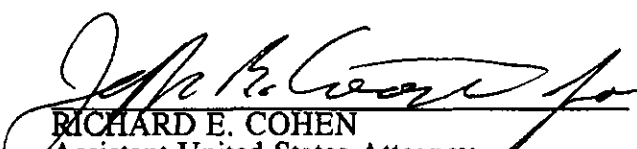
19 17. Post-Plea Conduct. Defendant understands that the terms of this Plea  
20 Agreement apply only to conduct that occurred prior to the execution of this  
21 Agreement. If, after the date of this Agreement, Defendant should engage in conduct  
22 that would warrant an increase in Defendant's adjusted offense level or justify an  
23 upward departure under the Sentencing Guidelines (examples of which include, but are  
24 not limited to: obstruction of justice, failure to appear for a court proceeding, criminal  
25 conduct while pending sentencing, and false statements to law enforcement agents, the  
26 probation officer or Court), the United States is free under this Agreement to seek a  
27 sentencing enhancement or upward departure based on that conduct.  
28

1        19. Completeness of Agreement. The United States and Defendant  
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
3 This Agreement only binds the United States Attorney's Office for the Western District  
4 of Washington. It does not bind any other United States Attorney's Office or any other  
5 office or agency of the United States, or any state or local prosecutor.

6        Dated this 21<sup>st</sup> day of July, 2003.

7  
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9          
10        TIMOTHY T. MOODY  
11        Defendant

12  
13          
14        GILBERT H. LEVY  
15        Attorney for Defendant

16  
17          
18        RICHARD E. COHEN  
19        Assistant United States Attorney

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21          
22        JEFFREY B. COOPERSMITH  
23        Assistant United States Attorney

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**ATTACHMENT A**

**7445 TREELINE DRIVE, NAPLES, FLORIDA  
REAL PROPERTY LEGAL DESCRIPTION**

Real Property located in the County of Collier, State of Florida, and described as follows:

Lot No. 3, Tract 4, Olde Cypress, Unit One, according to the plan thereof recorded in  
Plat Book 32, Pages 1 through 11, of the Public Records of Collier County, Florida.

Assessors Parcel Number 0000064625000748

## PLEA AGREEMENT SPECIAL ASSESSMENT PAYMENT

### INSTRUCTIONS FOR PAYING SPECIAL ASSESSMENTS PRIOR TO SENTENCING

1. Special Assessments paid prior to sentencing must be paid to the Clerk, United States District Court.
  2. Special Assessments must be paid by a first party, certified, or cashiers check, or a money order. No second party checks will be accepted. No post-dated checks will be accepted.
  3. All checks must be made out in U.S. dollars to "Clerk, U.S. District Court."
  4. All checks or money orders must be accompanied by the attached form entitled, "Plea Agreement Special Assessment Payments." The entire form must be filled out or the Clerk, United States District Court, will not accept the payment.
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TO: CLERK, U.S. DISTRICT COURT  
ATTN: INTAKE TEAM

DATE SUBMITTED: \_\_\_\_\_

PAYMENT SUBMITTED BY: \_\_\_\_\_

CASE NAME: United States v. Timothy T. Moody

CASE DOCKET NUMBER: CR03-176P

DEFENDANT'S NAME: Timothy T. Moody

SINGLE OR MULTIPLE DEFENDANTS (from Indictment; circle one)

TOTAL SPECIAL ASSESSMENT PER DEFENDANT AS SET FORTH IN THE PLEA  
AGREEMENT: \$ 100.00